



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1998

Mr. S. Cass Weiland
Capshaw, Weiland, Goss & Bowers, L.L.P.
NationsBank Plaza
901 Main Street, Suite 2600
Dallas, Texas 75202

OR98-1872

Dear Mr. Weiland:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117115.

The Kaufman County Sheriff's Office (the "sheriff") received a request for nine categories of information, including personnel records and job performance reviews, concerning "[a]ll Kaufman County Law Enforcement Officers who participated in the search warrant on 21st day of April, 1995, at the 'Classic Club' 606 Adelaide Street." You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents that you have submitted.¹

Although you have not submitted a search warrant affidavit in your representative sample, we note that an affidavit to support a search warrant is made public by statute if it has been executed. *See* Code Crim. Proc. art. 18.01(b). The Open Records Act's exceptions do not, as a general rule, apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989).

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the sheriff is currently involved in litigation concerning the execution of the search warrant which is the subject of this request for information. *Williams v. Kaufman County*, No. 3-97CV0875-R (N.D. Tex. filed April 21, 1997). You have also demonstrated how each of the nine categories of information relates to the pending lawsuit. We find that you may withhold the requested information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117115

Enclosures: Submitted documents

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(w/o enclosures)